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Parents want, above all else, for their children to be safe at school.

Colorado Governmental Immunity Act

24-10-102. Declaration of policy

It is recognized by the general assembly that the doctrine of sovereign immunity, whereunder the state and its political subdivisions are often immune from suit for injury suffered by private persons, is, in some instances, an inequitable doctrine. The general assembly also recognizes that the Supreme Court has abrogated the doctrine of sovereign immunity effective July 1, 1972, and that thereafter the doctrine shall be recognized only to such extent as may be provided by statute. The general assembly also recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens. It is also recognized that public employees, whether elected or appointed, should be provided with protection from unlimited liability so that such public employees are not discouraged from providing the services or functions required by the citizens or from exercising the powers authorized or required by law. It is further recognized that the state, its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article. The general assembly also recognizes the desirability of including within one article all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and that the distinction for liability purposes between governmental and proprietary functions should be abolished.

The Colorado Governmental Immunity Act does not apply to claims based on federal civil rights violations. *Martinez v. El Paso County*, 673 F. Supp. 1030 (D. Colo. 1987).

The Colorado Governmental Immunity Act governs the circumstances under which a person may maintain a tort action against the state, its political subdivisions, and its employees. *Mesa County Valley School Dist. v. Kelsey*, 8 P.3d 1200 (Colo. 2000).

No immunity for sister state's activities in this state. Where an injured party is a citizen of this state, injured in this state, and sues in the courts of this state, there is no immunity, by law or as a matter of comity, covering a sister state's activities in this state. *Peterson v. State of Texas*, 635 P.2d 241 (Colo. App. 1981).

Governmental Immunity Summary

A school district is subject to only a narrow class of legal claims resulting from its acts or omissions under the Colorado's Governmental Immunity Act (CGIA). The CGIA limits the types of claims that can be brought against a school district (i.e. claims involving operation of a motor vehicle and claims arising because of a dangerous condition of any public building) and the amount of monetary damages that a school district might be ordered to pay.

The Act also protects public employees, which includes paid employees and "authorized volunteers." A public employee must be acting within the scope of his or her employment and in a manner not willful or wanton to be protected from claims of liability. The term "willful and wanton" is defined as "conduct purposefully committed which the individual must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff". This definition can be translated as any criminal act or any known act that creates harm or injury (in any fashion) to another person.

The Immunity act places a cap on the amount of damages that can be awarded against a public entity or employee. The maximum amount that can be recovered for an injury involving one person in any single occurrence is \$150,000. The maximum amount that is recoverable for a single occurrence involving two or more people is \$600,000.

In the event of a claim against a "public employee" the public entity must pay the reasonable costs of its employee's legal defense unless one of the following circumstances exist: the employee's act was outside the scope of employment, the act was willful or wanton, or the employee compromises or settles a claim without the consent of the public entity.

The cause of many lawsuits are unmanaged or mismanaged risks.

Specific Areas Involving Students

Student Interrogations And Searches

Reasonable grounds - that a search will turn up evidence that the student has violated either the law or school rules.

Scope of the search must be reasonably related to the objectives of the search.

Respect the privacy of the student and not be any more intrusive than necessary, considering the age and gender of the student and nature of the suspected infraction.

Searches may involve a student and/or his property while on school premises or during a school activity.

All lockers, desks, storage, and similar areas provided for student use on school premises are school property and remain at all times under the control of the school.

May seize any illegal, unauthorized or contraband materials.

Whenever possible, the student shall be informed of the reason(s) for conducting the search prior to the actual search. A student's failure to cooperate with school officials conducting a search shall be considered grounds for disciplinary action.

Use Of Physical Intervention

Corporal punishment shall not be administered to students by anyone in any district school.

Any person employed by the district may, within the scope of his employment, use and apply such amounts of force as are reasonably necessary and appropriate for the following purposes:

1. To prevent a student from an act of wrong-doing
2. To quell a disturbance threatening physical injury to self or others.
3. To obtain possession of weapons or other dangerous objects that are within the control of a student
4. For the purpose of self-defense
5. For the protection of persons or property
6. To maintain discipline

Any such acts are not in conflict with the legal definition of child abuse and shall not be construed to constitute corporal punishment within the meaning and intention of this policy.

Reporting Child Abuse

It is the policy of the Board of Education that the school district comply with the Child Protection Act and with the mandatory reporting requirements of that act.

To that end, any school official or employee who has reasonable cause to know or suspect that a child has been subject to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect, as defined by statute, shall immediately report or cause a report to be made to the County Department of Social Services or local law enforcement agency.

Failure to report promptly may result in civil and/or criminal liability. A person who reports child abuse or neglect in good faith is immune from civil or criminal liability.

Reports of child abuse or neglect shall be kept confidential

It is not the responsibility of the school official or employee to prove that the child has been abused or neglected.

Disciplinary Information to School Personnel

In accordance with state law, the principal or designee is required to communicate disciplinary information (a serious nature that is not otherwise available to teachers and counselors as part of the education records). The principal or designee is required to inform the student and the student's parent/guardian when disciplinary information is communicated and to provide a copy of the disciplinary information.

-To any teacher who has direct contact with the student in the classroom and to any counselor who has direct contact with the student.

-To keep school personnel apprised of situations that could pose a risk to the safety and welfare of others.

Any teacher or counselor to whom disciplinary information is reported shall maintain the confidentiality of the information and shall not communicate it to any other person.

Supervision Of Students

Principals shall provide for adult supervision for all school-sponsored activities before school, during recess and lunch periods, or after school whether or not they occur on school grounds.

Student Records

Content and Custody of Records
Parental Access to Records if student is less than 18 years old.
Requesting and Releasing Records
Disclosure with Written Consent
All signed consent forms shall be retained by the school district.
Disclosure Without Written Consent

Student Travel

Districts are committed to broad-based educational opportunities, which typically include off-campus activities and overnight excursions. The educational value of travel ought to be weighed against the risk and potential liability to the district. Risk management is not about the fear of what may happen but the management of what factors may exist or arise that could cause damage, loss or injury to students, staff, and chaperones and could create a potential liability to the district. The likelihood, extent, and effect of risk can be debated, but its existence, cannot be denied.

The risks are different when students leave the state of Colorado and the risks are different when students leave the country. Risks will always exist regardless of what's happening in the world; some of the questions to ask include: what's the likelihood that something will happen, how serious will it be, what mitigating factors will be available, and what could or should the district have done to avoid the risk. In the event of a serious situation, some of those questions most likely will be answered in court.

A couple factors, regarding out of state travel, that may be cause for concern are the loss of Governmental Immunity protection and the possibility that the level of coverage (through the excess policy) is inadequate, in the event of a serious claim, to cover a judgment against the District from an out-of-state court. In some cases, staff will choose to travel with students without district-sponsorship, e.g., foreign language trips. The personal financial risk assumed by the individual, when traveling with students without district sponsorship, cannot be overstated and those individuals ought to understand that risk and consider purchasing adequate personal insurance coverage.

Dress Codes

A school dress code that has the ability to prohibit a practically limitless range of ideas and images may be considered overbroad and unconstitutional, if challenged. Any school action that suspends a student's free speech rights must involve "a specific and significant fear of disruptions, not just some remote apprehension of disturbance."

Bullying

Bullying and teasing are cited as the top school troubles of students between the ages of 8 to 15 and the consequences of such behaviors are serious – absenteeism, poor grades, depression, and at the extreme, suicide.

School staff, the Board of Education, and the community must believe all students are entitled to a safe school environment and believe all types of bullying are unacceptable and take appropriate actions to create and maintain a safe, learning environment. (See C.R.S. 22-32-109.1 in References)

For the past several months, I have been telling audiences that the expanding capacity of PDAs (personal digital assistants), which now includes Internet access, will pose difficult policy questions for schools. Students are using PDAs in class to chat, play games, and cheat on tests. Some schools have banned the devices from classrooms along with cell phones; others allow them with some restrictions. About 7 percent of school districts provide students with handheld computers, often through corporate grants. To cut down on cheating, educational software vendors of quiz programs for PDAs have now begun to build in features that automatically disable the infrared beaming function, for example.

Source: "Schools Rule on Classroom Gadgets," Associated Press, www.wired.com, September 21, 2003

Investment in your education and licenses - \$60,000
Working 12-14 hour days, 220 days a year - \$75,000 +/-
Annual supply of aspirin and antacids - \$72
Making a difference in the life of a child... Priceless!

Our awesome responsibility is the educational, civic and social development of minor children.

Teens harassed at jobs

Law suits seek damages for girls in workplace

THE WASHINGTON POST

In the summer after her junior year in high school, Amanda Nichols took a job as a server at the local Steak 'n Shake, hoping to make some money for college.

Almost 3 million youngsters ages 15 to 17 work during the school year, and like Nichols, some harassment as teasing upon years past and now find they don't have to put up with it.

In Nichols' case, her father hired a lawyer who took her complaint to the EEOC, one of 25 such lawsuits the agency has filed or resolved on behalf of teens this year, compared with eight in 2002.

A Los Angeles area Jiffy Lube franchise, for example, paid \$300,000 to three female employees, including two 17-year-old high school students, who said supervisors and coworkers targeted them with lewd gestures and explicit remarks. She said she complained to managers and asked to be moved away from the man, but a manager refused.

Then one night, as Nichols went to her car in the parking lot, the cook followed her, she alleged, threatened her and exposed himself. She complained again, and when she told her manager to choose between the cook and her, she said she was told it might be best if she left, which she did.

But Nichols responded to her experience by doing a very adult thing: going to court. To day, Nichols is a sophomore in college, and the Equal Employment Opportunity Commission is suing Steak 'n Shake Operations Inc. on her behalf for sexual harassment and constructive discharge. Steak 'n Shake has denied the charges in court filings.

Awareness of sexual harassment grew during the 1990s and

has trickled down to teen-agers who might have looked upon some harassment as teasing in years past and now find they don't have to put up with it.

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year-old server who alleged she was touched inappropriately and subjected to sexual comments by a male co-worker. The restaurant's management ignored complaints until she quit, her suit charged. The company admitted no wrongdoing, A Red Lobster spokeswoman said: "Our company does not tolerate any form of harassment or unwelcome advances."

"Teens are particularly vulnerable because they are new to the workplace, they are inexperienced and are more likely than not at the bottom rung," said Jocelyn Samuels, vice president for education and employment with the National Women's Law Center. "They feel less authorized to complain, and they may not know that procedures are available to them."

"As long as humans have a dark spot, you can find a more sophisticated co-worker who takes advantage of someone vice chairwoman at the EEOC, Calif. "Today's teens have sources consultant in Oakland, Calif. "Today's teens have more awareness than they had four or five years ago because schools have had to ramp up their awareness of it."

Tiffany Grabin, now 25, was the complainant in one of the first cases in which the EEOC focused on teens being harassed at work.

"I knew that it's not appropriate to be treated that way, but I didn't know what to do about it," Grabin, who now lives and goes to school in Los Angeles, said in an interview.

Because teens are new to the work force, they expect the same teasing that happens in high school hallways, experts say, but when teasing is taken to another level, they do not know what to do, particularly if it involves an older co-worker.

In one of the few studies that has measured sexual harassment occurrences among teens who work part time, 35 percent of 712 high school students surveyed said they had experienced it.

"Part of the problem is they have no frame of reference," said Susan Fineran, a University of Southern Maine social work professor who conducted the study. "These are girls' first jobs."

That naive seems to be changing. "I think the schools are now starting to do more training and put the word out to the kids because schools have their own sexual harassment problems to worry about," said Craig Pratt, a human resources consultant in Oakland, Calif. "Today's teens have more awareness than they had four or five years ago because schools have had to ramp up their awareness of it."

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Sexual Harassment

Statistics

Studies suggest anywhere between 40-70% of women and 10-20% of men have experienced sexual harassment in the workplace.

About 15,000 sexual harassment cases are brought to the EEOC each year.

According to the Equal Employment Opportunity Commission, the number of sexual harassment complaints filed by men has more than tripled in recent years. Currently, approximately 11% of claims involve men filing against female supervisors.

Of students: 83% or girls and 79% of boys report experiencing harassment; Nearly all (96%) students surveyed, say they know what harassment is and boys' and girls' definitions do not differ substantially. 35% of students who have been harassed report that they first experienced it in elementary school. **Most harassment occurs under teacher's noses.** (American Assoc. of University Women Research/AAUW)

Sexual Harassment Lawsuits

Baker and McKenzie, the world's largest law firm, ordered to pay 7.175 million dollars to legal secretary who worked for the firm for 10 weeks. \$7.125 million of the award was a punitive award against the firm for ignoring her complaints, and those of other former female employees, about the same partner. The jury determined that 10% of the net worth of the firm would be a fair and reasonable assessment to sufficiently punish and deter the firm from ignoring repeated complaints from employees in the future (1994).

Mitsubishi ordered to pay 34 million dollars to 350 female workers in the largest sexual harassment settlement obtained by the EEOC. Plaintiffs showed that Mitsubishi ignored the repeated complaints of women about a sexually hostile working environment and demands for sexual favors (1996).

Mazda North America Inc. ordered to pay 4.4 million dollars to female employee after finding she had been harassed and then fired by a male supervisor after she refused to be his girlfriend (1999).

Manhattan Ford ordered to pay former employee 3.7 million dollars in sexual harassment and retaliatory discharge suit (1999).

Willamette Industries ordered to pay 1.35 million dollars to former employee for not taking reasonable steps to end harassment after she complained, and then firing her in retaliation for her complaints (1999).

The Pattern

Ignoring complaints and retaliation. Or, as one staff member replied – "Ignorance!"

Legal Basis

14th Amendment of the U.S. constitution – guarantees all persons equal protections under the law. In 1873 the Supreme Court interpreted the 14th Amendment as applying only to racial discrimination.

Title VII of the Civil Rights Act – prohibits employers from discriminating against anyone because of their race, gender, disability, etc.

Title IX of the Education Amendments of 1972 – prohibits discrimination based on a student's gender, in schools and colleges receiving federal funds. No student, on the basis of gender, shall be:

-excluded from participation in,
-denied the benefits of, or
-subjected to discrimination under

any education program or activity receiving federal financial assistance.

Students have the right to get an education and participate in school activities free from any unwelcome or unwanted sexual behavior.

Schools can be sued in Federal Court under the Title IX law for not taking action against sexual harassment.

Board Policy – Sexual Harassment – the Board of Education believes that every employee has the right to work in an environment free of sexual harassment.

Defining Sexual Harassment

The Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:"

Submission to or rejection of conduct that is used as a basis of employment decisions affecting the employee is defined as – **Quid Pro Quo**. Quid Pro Quo – is a Latin term that means "this for that" – requesting or offering or a sexual favor for an employment gain. Quid Pro Quo must involve someone in a position of power who has the authority to reward the individual i.e., supervisor, teacher, coach, etc.

Conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or of creating a hostile, intimidating or offensive work environment is defined as – **Hostile Environment**. A hostile environment claim requires more than a single incident of harassment and the sexual conduct must be shown to have been unwelcome.

The criteria used by the courts to determine the commission or presence of sexual harassment include frequency, severity, level of threat or humiliation and the impact upon the work place.

Types of Sexual Harassment Behavior

Sexual harassment behaviors include but are not limited to:

Verbal

Sexual innuendos and comments - notes, calls or email of a sexual nature
 Asking/commenting on sexual activities
 Humor or jokes about sex or females/males in general
 Sexually suggestive remarks, gestures, jokes
 Pestering a person form dates or sexual behavior
 Spreading rumors about a person's sexuality
 Name calling, use of derogatory and/or sexual language
 Threats or bribes for unwanted sexual activity

Visual/Written

Displaying offensive sexual illustrations
 Graffiti about a person's sexuality
 Exposure of intimate parts or simulating sexual acts
 Obscene e-mail, faxes, letters, etc.

Physical

Sexual touching, pinching, brushing, or patting
 Stalking
 Attempted or actual sexual assault

Examples of Sexual Harassment Behaviors Involving Students

Suggestive comments and gestures such as comments about a student's bodies;
 Pressure for dates, hooting, sucking, lip-smacking, and animal noises;
 Graphic descriptions and displaying of pornography;
 Obscene phone calls;
 Sexual graffiti, notes and pictures;
 Spreading sexual rumors, lewd and threatening letters, public humiliation;
 Touching or grabbing of body parts, 'accidentally' brushing sexual parts of the body

More severe: Stalking, indecent exposure, demands for sex, sexual assault, and rape.

The most common cited complaints of sexual harassing behavior regarding students are inappropriate jokes, looks, or gestures. Sexually suggestive touching or grabbing is the second most common complaint.

Most of the student harassment in junior high and high schools happens in hallways. Classrooms are the second most frequent location where harassment occurs.

Victims

Either gender
Any age
In all occupations and all organizations
Third party observers

Effects of Sexual Harassment

Feelings of fear, anger or powerlessness
Loss of self-confidence
Lower grades/poor performance
Absentism
Withdrawal from friends/co-workers

Proactive Measures

Establish personal level of behavior or standard
Communicate expectations of how you wish to be treated
Follow policy and procedures
Understand your rights as an employee
Address an issue before it becomes a problem

Employer Responsibilities in Addressing Claims of Sexual Harassment

Prompt and adequate response to notice of harassment
Conduct a thorough and objective investigation
Engage a serious effort to stop harassment
Document interviews, information, actions, and results
Inform the employee who filed the complaint of the outcome of the investigation; reiterate the employer's strong opposition to such behavior; urge the employee to immediately report recurrence or retaliation
Monitor efforts

What the School should do:

Pay attention to the school environment
Respond to sexual harassment in a reasonable manner as one would address any other types of serious misconduct
Do not overreact to behavior that does not rise to the level of sexual harassment. (As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment.)
Consider the age and maturity of students in responding to allegations of sexual harassment.

Employer / Employee Liability

Employers have strict liability in Quid Pro Quo cases; employers may be found liable in Hostile Environment cases depending upon the circumstances of the situation, the employer's knowledge of the behaviors and its response to complaints of harassment. Its costs and consequences may include settlements (many are in the six and seven figure range), fines and penalties, defense costs, loss of productivity, low employee morale.

Employees may face criminal and civil charges and may be responsible for assessed fines, penalties, settlements and defense costs. Employees may also be subject to disciplinary action up to and including termination of employment.

1st Amendment Issue

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech.

While the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard.

Specific Sexual Harassment Training Issues for Students

Sexual harassment training for students ought to include the same information used for employees but also expanded to focus on understanding the differences and effects of certain behaviors, emphasizing prevention and early reporting of sexual harassment, identifying measures students can take to address sexual harassment.

Flirting vs. Sexual Harassment

Is the questionable behavior normal flirting, the effect of raging hormones, or is it sexual harassment?

Sexual Harassment:

Feels bad
One-sided
Feels unattractive
Is degrading
Feels powerless
Power-based
Negative touching
Unwanted
Illegal
Invading
Demeaning
Sad/angry
Negative self-esteem

Flirting:

Feels good
reciprocal
feels attractive
is a compliment
in control
equality
positive touching
wanted
legal
open
flattering
happy
positive self esteem

Stop Sexual Harassment

If harassment has occurred, doing nothing is always the wrong response! However, depending on the circumstances, there may be more than one right way to respond.

Tell the harasser to stop
Talk to people you trust, enlist their help
Talk to the Title IX Coordinator for your school
Make a list of incidents
Keep any notes and pictures
Keep track of where and when things happened, who was there, and how you felt
Write a letter to the harasser – describe the behaviors you consider sexual harassment, how they made you feel, and that you want it to stop. Have an adult deliver the letter to the harasser.

Suggested Student Activities:

Publicize the school policy
Speak out when you see harassment
Conduct a survey in your school and publish the results
Form a student leadership group and make presentations
Take the Quiz @ www.wgby.org

Questions for Students:

- Who would you talk to at school if you needed to discuss harassment or make a report of an incident?
- What makes the difference between flirting and sexually harassing someone?
- If someone doesn't respond to a comment or behavior, does that mean it didn't bother him or her?
- If a girl laughs at a comment or act, does that mean it's all right with her? Do some people laugh when they're nervous?
- Does everyone respond the same way?
- Are some people quiet when they're uncomfortable?
- What kind of message do you need in order to know if attention is unwanted?
- Would you tell a teacher if you were being sexually harassed?
- How do bystanders contribute to a hostile environment?
- Do you think that students are responsible for the environment in their school?
- What are some ways to deal with sexual harassment?

IV. 22-32-109.1. Board of education - specific powers and duties - safe schools.

(1) **Mission statement.** Each school district board of education shall adopt a mission statement for the school district, which statement shall include making safety a priority in each public school of the school district.

(2) **Safe school plan.** In order to provide a learning environment that is safe, conducive to the learning process, and free from unnecessary disruption, following consultation with the school district accountability committee and school advisory councils, parents, teachers, administrators, students, student council where available, and, where appropriate, the community at large, each school district board of education shall adopt and implement a safe school plan, or review and revise, if necessary, any existing plans or policies already in effect, which shall include, but not be limited to, the following:

(a) **Conduct and discipline code.** A concisely written conduct and discipline code that shall be enforced uniformly, fairly, and consistently for all students. Copies of the code shall be provided to each student upon enrollment at the elementary, middle, and high school levels and shall be posted or kept on file at each public school in the school district. The code shall include, but shall not be limited to:

(I) General policies on student conduct, safety, and welfare;

(II) General policies and procedures for dealing with students who cause a disruption in the classroom, on school grounds, in school vehicles, or at school activities or sanctioned events, including a specific policy allowing a teacher to remove a disruptive student from his or her classroom and, upon the third such removal from a teacher's class, to remove the disruptive student from such teacher's class for the remainder of the term of the class. The general policies and procedures shall include a due process procedure, which at a minimum shall require that, as soon as possible after a removal, the teacher or the school principal shall contact the parent or legal guardian of the student to request his or her attendance at a student-teacher conference regarding the removal. A behavior plan may be developed after the first such removal from class, and shall be developed after the second such removal from class. Any policy or procedure adopted shall comply with applicable federal and state laws, including, but not limited to laws regarding students with disabilities.

(III) Provisions for the initiation of expulsion proceedings for students who qualify as habitually disruptive by causing a disruption in the classroom, on school grounds, in school vehicles, or at school activities or sanctioned events for a third time during a single school year or calendar year;

(IV) Policies and procedures for the use of acts of reasonable and appropriate physical intervention or force in dealing with disruptive students; except that no board shall adopt a discipline code that includes provisions that are in conflict with the definition of child abuse in section 18-6-401 (1), C.R.S., and section 19-1-103 (1), C.R.S.;

(V) General policies and procedures for determining the circumstances under and the manner in which disciplinary actions, including suspension and expulsion, shall be imposed in accordance with the provisions of sections 22-33-105 and 22-33-106;

(VI) A specific policy concerning gang-related activities in the school, on school grounds, in school vehicles, or at school activities or sanctioned events;

(VII) Written prohibition, consistent with section 22-33-106, of students from bringing dangerous weapons, drugs, or other controlled substances to school, on school grounds, in school vehicles, or at school activities or sanctioned events, or tobacco products on school grounds, in school vehicles, or at school activities or sanctioned events;

(VIII) A written policy concerning searches on school grounds, including student lockers;

(IX) A dress code policy that defines and prohibits students from wearing apparel that is deemed disruptive to the classroom environment or to the maintenance of a safe and orderly school. The dress code policy may require students to wear a school uniform or may establish minimum standards of dress; and

(X) On and after August 8, 2001, a specific policy concerning bullying prevention and education. For purposes of this subparagraph (X), "bullying" means any written or verbal expression, or physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated school bus stop, or at school activities or sanctioned events. The school district's policy shall include a reasonable balance between the pattern and the severity of such bullying behavior.

(b) **Safe school reporting requirements.** A policy whereby the principal of each public school in a school district shall submit annually, in a manner and by a date specified by rule of the state board, a written report to the board of education of such school district concerning the learning environment in the school during that school year. The board of education of the school district annually shall compile the reports from every school in the district and shall submit the compiled report to the department of education in a format specified by rule of the state board. The compiled report shall be made available to the general public. Such report shall include, but need not be limited to, the following specific information for the preceding school year:

(I) The total enrollment for the school;

(II) The average daily attendance rate at the school;

(III) Dropout rates for grades seven through twelve, if such grades are taught at the school; and

(IV) The number of conduct and discipline code violations, including but not limited to specific information on the number of and the action taken with respect to each of the following types of violations:

(A) Carrying, bringing, using, or possessing a dangerous weapon on school grounds, in school vehicles, or at school activities or sanctioned events without the authorization of the school or the school district;

(B) Use or possession of alcohol on school grounds, in school vehicles, or at school activities or sanctioned events;

(C) Use, possession, or sale of a drug or controlled substance on school grounds, in school vehicles, or at school activities or sanctioned events;

(D) Use or possession of tobacco products on school grounds, in school vehicles, or at school activities or sanctioned events;

(E) Being willfully disobedient or openly and persistently defiant and interfering with the orderly flow of information in a classroom;

(F) Commission of an act on school grounds that, if committed by an adult, would be considered criminal assault, other than third degree assault;

(G) Behavior on or off school property that is detrimental to the welfare or safety of other students or of school personnel, including behavior that creates a threat of physical harm to the student or to other students;

(H) Willful destruction or defacement of school property;

(I) Repeated interference with the school's ability to provide educational opportunities to and a safe environment for other students;

(J) Commission of an act on school grounds that, if committed by an adult, would be considered robbery; and

(K) Other violations of the code of conduct and discipline that resulted in documentation of the conduct in a student's record.

(V) For purposes of subparagraph (IV) of this paragraph (b), "action taken" means the specific type of discipline, including but not limited to the following categories of discipline:

(A) In-school suspension;

(B) Out-of-school suspension;

(C) Classroom removal in accordance with board policy;

(D) Expulsion;

(E) Referral to a law enforcement agency; or

(F) Any other form of discipline, which shall be officially identified as part of a board policy;

(VI) The conduct and discipline code violations required to be reported pursuant to subparagraph (IV) of this paragraph (b) shall specifically identify each conduct and discipline code violation by a student with a disability and each action taken with respect to each violation by a student with a disability;

(VII) The average class size for each public elementary school, middle school or junior high school, and senior high school in the state calculated as the total number of students enrolled in the school divided by the number of full-time teachers in the school. For purposes of this subparagraph (VII), "full-time teacher" means a person who is licensed pursuant to article 60.5 of this title or authorized by a letter of authorization issued pursuant to section 22-60.5-111 to

teach, and is primarily engaged in teaching during a substantial majority of the instructional minutes per school day.

(VIII) On and after August 8, 2001, the school's policy concerning bullying prevention and education, including information related to the development and implementation of any bullying prevention programs.

(3) **Agreements with state agencies.** Each board of education shall cooperate and, to the extent possible, develop written agreements with law enforcement officials, the juvenile justice system, and social services, as allowed under state and federal law, to keep each school environment safe. Each board of education shall adopt a policy whereby procedures will be used following instances of assault upon, disorderly conduct toward, harassment of, the making knowingly of a false allegation of child abuse against, or any alleged offense under the "Colorado Criminal Code" directed toward a schoolteacher or school employee or instances of damage occurring on the premises to the personal property of a schoolteacher or school employee by a student. Such procedures shall include, at a minimum, the following provisions:

(a) Such schoolteacher or school employee shall file a complaint with the school administration and the board of education.

(b) The school administration shall, after receipt of such report and proof deemed adequate to the school administration, suspend the student for three days, such suspension to be in accordance with the procedures established therefor, and shall initiate procedures for the further suspension or expulsion of the student where injury or property damage has occurred.

(c) The school administration shall report the incident to the district attorney or the appropriate local law enforcement agency or officer, who shall, upon receiving such report, investigate the incident to determine the appropriateness of filing criminal charges or initiating delinquency proceedings.

(4) **Crisis management policy.** Each board of education shall establish a crisis management policy that, at a minimum, sets forth written procedures for taking action and communicating with local law enforcement agencies, community emergency services, parents, students, and the media in the event of a crisis. Each policy shall provide for school district employee crisis management training.

(5) **Safety and security policy.** Each board of education shall adopt a policy requiring annual school building inspections to address the removal of hazards and vandalism and any other barriers to safety and supervision.

(6) **Sharing information.** Notwithstanding any provision to the contrary in title 24, C.R.S., each board of education shall establish policies consistent with section 24-72-204 (3), C.R.S., and with applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, to share and release information directly related to a student and maintained by a public school or by a person acting for the public school in the interest of making schools safer.

(7) **Open school policy.** Each board of education shall adopt an open school policy to allow parents and members of the school district board of education reasonable access to observe

classes, activities, and functions at a public school upon reasonable notice to the school administrator's office.

(8) **Employee screenings.** Each board of education shall adopt a policy of making inquiries upon good cause to the department of education for the purposes of screening licensed employees and nonlicensed employees hired on or after January 1, 1991. Licensed employees employed by school districts on or after January 1, 1991, shall be screened upon good cause to check for any new instances of criminal activity listed in section 22-32-109.9 (1) (a). Nonlicensed employees employed by a school district on or after January 1, 1991, shall be screened upon good cause to check for any new instances of criminal activity listed in section 22-32-109.8 (2) (a).

(9) **Immunity.** (a) A school district board of education or any person acting in good faith in accordance with the provisions of subsection (2) of this section in carrying out the powers or duties authorized by said subsection shall be immune from civil or criminal liability for such actions; except that a person acting willfully or wantonly in violation of said subsection shall not be immune from liability pursuant to said subsection.

(b) A teacher or any other person acting in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section shall be immune from civil liability; except that a person acting willfully and wantonly shall not be immune from liability pursuant to this paragraph (b). The court shall dismiss any civil action resulting from actions taken by a teacher or any other person pursuant to the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section upon a finding by the court that the person acted in good faith and in compliance with such conduct and discipline code and was therefore immune from civil liability pursuant to paragraph (a) of this subsection (9). The court shall award court costs and reasonable attorney fees to the prevailing party in such a civil action.

(c) If a criminal action is brought against a teacher or any other person for actions taken pursuant to the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section, it shall be an affirmative defense in such criminal action that the teacher or such other person was acting in good faith and in compliance with the conduct and discipline code and was not acting in a willful or wanton manner in violation of the conduct and discipline code.

(d) An act of a teacher or any other person shall not be considered child abuse pursuant to sections 18-6-401 (1) and 19-1-103 (1), C.R.S., if:

(i) The act was performed in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section; or

(ii) The act was an appropriate expression of affection or emotional support, as determined by the board of education.

(e) A teacher or any other person who acts in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section shall not have his or her contract nonrenewed or be subject to any disciplinary proceedings, including dismissal, as a result of such lawful actions, nor shall the actions of the

teacher or other person be reflected in any written evaluation or other personnel record concerning such teacher or other person.

(10) **Compliance with safe school reporting requirements.** If the state board determines that a school district or one or more of the public schools in a school district is in willful noncompliance with the provisions of paragraph (b) of subsection (2) of this section, the state's share of the school district's total program, as determined pursuant to article 54 of this title, may be subject to forfeiture until the school district and each school in the district attains compliance with the provisions of paragraph (b) of subsection (2) of this section.

Source: L. 2000: Entire section added, p. 1957, § 1, effective June 2. **L. 2001:** (2)(b)(VII) amended, p. 1272, § 26, effective June 5; **IP(2),** (2)(a)(VIII), and (2)(a)(IX) amended and (2)(a)(X) and (2)(b)(VIII) added, pp. 494, 495, §§ 2, 3, effective August 8. **L. 2002:** **IP(2)** and **IP(9)(d)** amended, p. 1020, § 30, effective June 1.

Cross references: For the legislative declaration contained in the 2001 act amending the introductory portion to subsection (2) and subsections (2)(a)(VIII) and (2)(a)(IX) and enacting subsections (2)(a)(X) and (2)(b)(VIII), see section 1 of chapter 154, Session Laws of Colorado 2001.

"It's easier to build strong children than to repair broken men." – Frederick Douglass